

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
(Western Division)**

MARGIE J. PHELPS, et al.,

Petitioners,

vs.

**RED OAK POLICE CHIEF
DRUE POWERS, et al.,**

Respondents,

and

STATE OF IOWA,

Intervener.

DOCKET NO. 1:13-cv-00011

**INTERVENER'S RESPONSE TO
PETITIONERS' REQUEST FOR
ATTORNEY FEES & EXPENSES**

COMES NOW the State of Iowa, and for its response to Petitioners' Request for Attorney Fees and Expenses respectfully states:

1. Following partial grant of their Motion for Summary Judgment, Petitioners filed a Request for Attorney Fees and Expenses pursuant to 42 U.S.C. section 1988.
2. While the recovery of attorney fees are permitted under 42 U.S.C. section 1988(b) to the prevailing party, they are not mandatory and remain soundly within the presiding judge's discretion.
3. The State acknowledges that attorney fees are generally recoverable from a losing intervener. Those fees, however, should be commiserate with the respective actions of the parties. Here, the only action attributed to the State is the existence of the challenged statutes—Iowa's Flag Discretion and Flag Misuse statutes. No State official was alleged to have enforced or attempted to enforce either of these statutes against the Petitioners or anyone else.